Office-Supreme Court, U.S.
FILED
JUL 10 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2135

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

TOMMIE L. FULKS, ET AL.,
Respondents,

versus

AVONDALE SHIPYARDS, INC.,
Petitioner.

On Cross Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Fifth Circuit

BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Fulks was exposed to sandblasting in his work.
2. Whether Fulks was covered by the federal act.
3. Whether Fulks gave notice of his illness.

STATEMENT OF PARTIES

Under Rule 21.1(b) and Rule 28.1, counsel for Tommie L. Fulks certifies that the following are parties to this proceeding:

Tommie L. Fulks, Respondent

Avondale Shipyards, Inc., Petitioner

Director, Office of Workers' Compensation Programs, U.S. Department of Labor

Ogden Corporation, parent corporation of Avondale Shipyards, Inc.

Veterans Administration, New Orleans, supplier of medical services to Fulks

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JURISDICTION

There is no dispute as to jurisdiction.

STATEMENT OF THE CASE

Fulks went to his family physician in 1966. He had chest trouble and the family physician referred him to

welders are sent where they are needed on the shore and on vessels.

As to notice the courts below have all held that Fulks was within statutory limits with submission of his BEC-203 form in 1973.

Defendants argue that Fulks should have made an informed medical opinion by himself and without any prior advice from experts, claimed work-related compensation in 1966. A welder with no medical expertise, Fulks made his claim when he was advised by a physician for the first time that his illness was connected with his work.

ARGUMENT

The act has a presumption that a claim falls under its provisions. 33 U.S.C. Sec. 920(a), *Strachan Shipping Co. v. Shea*, 406 F.2d 521 (5th Cir.), *cert. den.*, 395 U.S. 921 (1969). This presumption gains added weight if the illness worsens during employment. *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1085 (D.C. Cir.) *cert. den.*, 429 U.S. 820 (1976).

An injury that happens on land may be compensable under the LHWCA if the cause originated on the water. *Andras v. Donovan*, 414 F.2d 241, 243 (5th Cir. 1969).

Welder Fulks gave notice when informed of the connection between his work and his illness. This was in

CERTIFICATE OF SERVICE

I hereby certify that three copies of the above and foregoing have been sent to opposing counsel of record, by depositing them in U.S. Mail, postage prepaid this ____ day of July, 1981.

I further certify that all parties required to be served have been served.

Hugh G. Oliver